IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1054 OF 1991.

The Union of India
through its General Manager,
Central Railways, having its
office at Bombay V.T., Bombay. : Appellant.

versus

M/s.Bansilal Lakhichand

Sancheti : Respondent.

Mr.A.N.Samant for the appellants.

Ms.Sonia Miskin with B.L.Chhajed for the respondent

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding compensation to the respondent.

2. Mr.Samant, the learned counsel for the appellants, has raised only one contention. That is the Railway Receipt was issued by the Railway

as "Said to Contain" basis. He states that the appellant has deposited the amount awarded. Therefore, according to him, the principal amount awarded shall carry interest at the rate of 9% per annum from the date of application up to the date of withdrawal by the claimant of the amount deposited by the railways pursuant to the order of this court or up to the date of investment with proportionate costs of the tribunal.

3. So far as the contention of Mr.Samant regarding RR with the endorsement "Said to Contain" is concerned, the same is required to be rejected. Mr.Samant contended that the railway receipt was with an endorsement said to contain and therefore it was obligatory on the claimants to prove the actual quantity of goods entrusted to the railways and in the absence of that evidence the railway was not liable to pay damages and even if the shortage certificate was issued, the same was of no help. Mr.Samant contended that there was no evidence on record produced or adduced by the claimants at all in this regard.

6. In this case, the applicants were the owners and endorsed consignee of the suit consignment. They were claiming shortage and damage to the consignment booked under R.R.Nos.779987 and 779988 dated 5.7.1982. from ex-Pilibangaon to Poona. The applicants have taken delivery of the consignment and received Shortage/Damage Certificate from the Railways. The name of the applicants is endorsed on the back of the RRs. The damage certificates are in the name of the applicants. These documents and evidence produced before the tribunal clearly show that the applicants have title to the goods. According to the applicants, 30 bags in each consignments were damaged by wet and the net damage was assessed at 1580 kg. each i.e. in total 3160 kg. valued at Rs.8690/- . The applicants have claimed Rs.275/- per quintal. The tribunal held that this claim of the applicants was reasonable and they are entitled to Rs.8690/- as compensation. The Tribunal framed as many as 5 Issues but the Issue regarding RR "Said to contain" was not at all framed. The tribunal found that the claim of the applicants was reasonable and they were entitled to the compensation for the damages caused to

their goods.

7. Railways can raise defence of said to contain when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual damage certificates and if the actual damage suffered can be ascertained on the basis of the evidence on record, then question as to how much quantity was entrusted to the railways becomes secondary. The damage certificates show that the railways were in a position to make assessment of the damages in respect of the bags, number of bags actually damaged under the invoice. The tribunal has rightly accepted the case of the claimant on the basis of evidence adduced. In the circumstances, the defence of said to contain is not available to the appellants.

8. The tribunal has accepted the claim and contention of the applicants and awarded compensation with interest at the rate of 9% per

annum from the date of application till the date of realisation of the amount and costs.

9. Mr.Samant for the appellant states that the appellant has deposited the amount. In the result, I pass the following order:-

:ORDER:

. The Appeal is dismissed.

. However, the interest awarded by the tribunal will run up to the date of deposit or withdrawal.

. so far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE,J]